



June 9, 2000

Mr. Scott Gibson  
Enforcement Attorney  
Texas Board of Architectural Examiners  
333 Guadalupe, Suite 2-350  
Austin, Texas 78701-3942

OR2000-2256

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136485.

The Texas Board of Architectural Examiners (the "board") received an open records request for information regarding four named individuals and six named companies. In addition, the requestor asked for the disclosure of specifically described information regarding one of the named individuals whom you explain is an architect formerly registered with the board. You have limited your ruling request to the information related to this one individual.<sup>1</sup> You have submitted representative samples of the requested information for our review.<sup>2</sup> You assert that the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common law privacy. We have considered the exception you claim and reviewed the submitted information.

You explain that the requested records include documents relating to a board disciplinary hearing arising out of the architect's plea of nolo contendere to the felony offense of misapplication of fiduciary property for which unadjudicated probation was imposed. You argue that because the documents contain criminal history references, the individual's common law privacy rights are implicated.

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<sup>1</sup>We assume you have released the responsive information regarding the other listed individuals and companies.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the submitted information includes court documents. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure. *See* Gov't Code § 552.022(a)(17) (information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-8 (Tex. 1992) (“Trial proceedings are public information.”).

The submitted information includes a transcript of the board's hearing. The Texas Administrative Code provides that all contested case hearings of the board “shall be open to the public.” 22 T.A.C. § 1.250. In addition, pursuant to section 3(c) of article 249a of the Texas Civil Statutes, the board is to keep a record of all proceedings of the board and such records “shall be open to public inspection at all reasonable times.” Therefore, we conclude that the transcript of the hearing, including the references to the subject individual's criminal history, is public information and must be released. *See* Open Records Decision No. 548 (1990).

We now consider the applicability of your section 552.101 claim to the remaining information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses common law privacy and excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common law right of privacy if the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and is not of legitimate concern to the public. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The remaining information consists of documents generated in connection with the disciplinary hearing before the board (investigation information form, complaint, and proposed findings of fact and conclusions of law), a judgment nunc pro tunc, a motion for rehearing, and various correspondence regarding the charges brought against the individual and the resulting probation. A review of the information reveals that the criminal history references contained within the information relate to the felony offense for which the individual received probation. That offense also served as a basis for the board's investigation, hearing, and subsequent revocation of the individual's license. Therefore, we conclude there is a legitimate public interest in the disclosure of the information. As a result, the information must be released to the requestor.

In summary, the submitted information, as well as information substantially similar to the submitted documents, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 136485

Encl. Submitted documents

cc: Mr. Kenneth G. Hill  
National Automobile Dealership Consultants  
P.O. Box 180898  
Dallas, Texas 75218  
(w/o enclosures)